

July 22, 1997

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
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Seattle, Washington 98104
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REPORT AND DECISION ON:

- A. APPEAL OF THRESHOLD DETERMINATION
- B. APPLICATION FOR PRELIMINARY PLAT APPROVAL

SUBJECT: King County Department of Development and Environmental Services File No.
L96P0028

VISTAS AT BEAVER CREST
Appeal of Threshold Determination and
Preliminary Plat Application

Location: Lying on the west side of 244th Avenue Southeast, approximately between
Main Street (if extended) and Southeast 8th Street

Owner: Beaver Crest II Tenancy in Common
Merwin E. Casey, Attorney in Fact
720 Third Avenue, 18th Floor
Seattle, WA 98104
206 623-3577

Developer: Pacific Properties
14410 Bel-Red Road
Bellevue, WA 98104
206 644-2323

Appellant: Craig N. Dickison
1235 238th Avenue Southeast
Issaquah, WA 98029
557-0183

SUMMARY OF DECISION:

SEPA

Department's Preliminary Recommendation:	Deny the appeal
Department's Final Recommendation:	Deny the appeal
Examiner Decision:	Deny the appeal

PLAT

Department's Preliminary Recommendation: Approve, subject to conditions
Department's Final Recommendation: Approve, subject to conditions
Examiner Decision: Approve, subject to conditions

EXAMINER PROCEEDINGS:

Hearing Opened: July 8, 1997
Hearing Closed: July 9, 1997

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County
Hearing Examiner.

ISSUES ADDRESSED:

- Road capacity and mitigation
 - arterial roads and intersections
 - concurrency
 - transportation improvement programs
 - SEPA authority

FINDINGS, CONCLUSIONS DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

A. INTRODUCTION AND PROCEDURAL BACKGROUND:

1. General Information:

Owner: Beaver Crest II Tenancy in Common
Merwin E. Casey, Attorney in Fact
720 Third Avenue, 18th Floor
Seattle, WA 98104
Phone: (206) 623-3577

Developer: Pacific Properties
14410 Bel-Red Road
Bellevue, WA 98007
Phone: (206) 644-2323

Engineer: Triad Associates
11814 115th Avenue NE
Kirkland, WA 98034
Phone: (206) 821-8448

STR: 34 - 25 - 6

Location: Lying on the west side of 244th Avenue SE, approximately between Main Street (if extended) and SE 8th Street

Zoning: R-6-P

Acreage: 33.19

Number of Lots: 124 (97 for detached single-family residences and 27 for townhouses)

Density: Approximately 3.90 dwelling units per acre

Lot Size: Detached single-family: ranges from approximately 5,000 to 9,000 sq. ft.

Townhouses: Ranges from approximately 3,000 to 6,800 sq. ft.

Proposed Use: Detached single-family residences and townhouses

Sewage Disposal: Sammamish Plateau Water and Sewer District

Water Supply: Sammamish Plateau Water and Sewer District

Fire District: King County Fire District No. 10

School District: Lake Washington School District No. 414

Complete Application

(Vesting) Date: February 7, 1997

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary report to the King County Hearing Examiner for the July 8, 1997 public hearing are found to be correct and are incorporated herein by reference. The LUSD staff recommends denial of the threshold determination appeal and approval of the preliminary plat application, subject to conditions.
3. A revised preliminary plat application was filed by Pacific Properties on February 7, 1997, to subdivide 33.19 acres into 124 lots for residential development. Ninety-seven of the lots are planned for detached single family residences and the remaining 27 for townhouses. The property is located east of 228th Avenue Southeast and north of Southeast 8th Street within a portion of the Sammamish Plateau which is rapidly being converted from undeveloped forest tracts to residential development. Other projects in the neighborhood either currently under construction or within the later stages of the review process include Beaverdam, The Greens at Beaver Crest, Renaissance, Three Willows and The Heights at Beaver Crest.
4. A mitigated determination of nonsignificance ("MDNS") was issued for this proposal on May 20, 1997. The MDNS contains an elaborate set of traffic mitigations imposed collectively on Vistas at Beaver Crest and other nearby projects. These conditions provide for joint mitigation projects to be implemented along Southeast 8th Street and the 244th and 228th Avenue corridors. The MDNS conditions also require the subject proposal to contribute to the construction of a right turn lane at SR 202 and Sahalee Way. Drainage conditions to protect Allen Lake downstream from the project and an onsite creek from potential capacity and erosive impacts are also included in the MDNS.

B. SEPA THRESHOLD DETERMINATION APPEAL:

5. An appeal of the SEPA MDNS was filed on June 11, 1997, by area resident Craig Dickison. Mr. Dickison challenges the adequacy of the traffic mitigations imposed for this project and alleges that cumulative impacts from development on the Plateau will result in traffic delays and congestion which were neither evaluated within the SEPA process nor appropriately mitigated. Mr. Dickison is particularly critical of the cumulative impacts resulting from assignment of traffic from this and other similar Sammamish Plateau projects onto roadways which are already at capacity. He also faults the failure of the SEPA analysis to take into consideration traffic conditions at key intersections within the AM-peak hour.
6. The traffic study performed for this project by TPE, Inc. concluded that the project would generate 1,037 average daily weekday trips, with 108 total trips in the PM-peak hour, 70 of which enter the site. Using standard trip distribution models for this portion of the Plateau, the King County Department of Transportation issued certificates of concurrency to the various Beaver Crest plats based on TAM calculations performed for 500 dwelling units in November 1995 and another 247 units in March 1996. The Beaver Crest plats generated a site TAM (Transportation Adequacy Measure) score of .782, which is just barely beneath the zone threshold of .79. The Beaver Crest proposals also passed the Department's "critical links" test, even though the application summary printout identifies project traffic employing a number of unfunded links where the calculated V/C ratio exceeds 1.1. A passing grade was predicated on a projection that Beaver Crest would send less than 30% of its total traffic through these deficient roadway links during the PM-peak hour, thus falling below the minimum requirement for triggering the critical links analysis.
7. Subsequent to plat application the Vistas at Beaver Crest project was also reviewed by Department of Transportation staff under the King County Intersection Standards, which require analysis and mitigation for those intersections which will provide access to the project, function at worst than LOS E, and be impacted by at least 30 project peak hour trips comprising 20% of the total project traffic for that timeframe. The SEPA MDNS conditions imposed along the 228th Avenue corridor are based on findings that LOS F conditions will obtain at the locations identified and that minimum project thresholds have been exceeded. However, for those portions of the 228th Avenue corridor which will be improved under an existing County CIP project, no separate SEPA conditions were imposed because Vistas at Beaver Crest will contribute MPS fees to the CIP. Finally, pro rata contributions will be required of the Applicant for interim improvements at SR 202/Sahalee Way based on an interlocal agreement between the County and WSDOT.
8. Despite these elaborate mitigation requirements, Mr. Dickison contends both that the Sammamish Plateau population is growing faster than scheduled capital projects can accommodate and that the capital project list itself fails to remedy certain identified traffic bottlenecks. The recently completed King County Executive Task Force Report on Transportation Concurrency and the Environmental Review Process confirms the Appellant's essential conclusions. The Task Force report makes the following summary observation:

"There are now areas of the County that are out of compliance with Concurrency because the level of service standards are being violated. Three basic factors cause an area to go out of compliance with Concurrency: 1) issuance of Concurrency Certificates in some parts of the County has exceeded planning expectations; 2) capital facility projects have not kept pace with this unexpected growth; and 3) there is a lack

of adequate funding to support capacity projects in the short term."

9. Since the Task Force report notes that 42% of the concurrency certificates approved in the County since January 1995 have been for the East Sammamish Community Planning area, it is not difficult to comprehend that residential growth on the Plateau has outstripped road construction. The situation seems to be particularly severe along East Lake Sammamish Parkway, which was already functioning at LOS F in 1990 and has experienced no significant capacity upgrades since that time. Even though East Lake Sammamish Parkway has no further theoretical traffic capacity for peak hour use, residential developments on the Plateau continue to be approved based on traffic distribution models which assign additional traffic to this roadway. The County system allows this to occur because these individual project traffic assignments each fall below the 30% threshold required to invoke the critical links test. Mr. Dickison's essential point is that the cumulative impact of numerous residential projects each funneling less than 30% of their peak hour traffic to an LOS F roadway can only be to make an already unacceptable situation even more extreme. Because Plateau population growth levels are now approaching official GMA projections for the year 2010, traffic facilities planning for this area has been hopelessly outstripped by reality.
10. In order to obtain a complete picture, however, it needs to be pointed out that the County's traffic impact mitigation system is a dynamic process which is constantly adjusting to these new realities. First, it should be understood that the 30% threshold for the unfunded critical links test does not absolutely exempt impacts below this threshold from analysis. The weighted Level of Service impact of those unfunded critical links receiving less than 30% of a project's traffic remains reflected in the proposal's site TAM score for the serving roadway system as a whole. Moreover, with respect to the Beaver Crest plats, because the applicable zone threshold is set at 0.79 (which translates to a Level of Service C), the sensitivity of the project TAM score to high critical link V/C ratings is relatively increased. Further, the simple fact that a project contributes less than 30% of its peak hour traffic to a particular roadway suggests the strong likelihood that alternative routes exist for such traffic. This fact becomes particularly germane when examining the Level of Service data for East Lake Sammamish Parkway. For example, northbound project traffic headed for Redmond and the SR 202 corridor will be able to access SR 202 via upgraded arterial facilities along both 228th Avenue Northeast and 244th Avenue Northeast. In such case, the inclination of project traffic to actually prefer the East Lake Sammamish Parkway route to SR 202 should be minimal.
11. While Mr. Dickison has cited data demonstrating that cumulative impacts from Vistas at Beaver Crest and other contemporaneous residential projects on the East Sammamish Plateau will have traffic impacts beyond the short term ability of the King County Mitigation System to alleviate, resolution of his appeal ultimately depends upon an analysis of the role of SEPA authority in the County's overall traffic mitigation process. ESHB 1724, enacted by the State Legislature in 1995, encourages the integration of SEPA analysis into the Growth Management development review process and allows local jurisdictions to establish mitigation standards which effectively preempt additional SEPA review. King County Ordinance No. 11617, while it predates ESHB 1724 by about a half year, anticipates this legislative thrust and circumscribes the application of SEPA authority within the County's Integrated Transportation Management Program. Notwithstanding certain deferential statements relating to the application of SEPA, the clear intention of Ordinance 11617 is that mitigation for impacts to the capacity of the road system generally is to be addressed through the MPS fee system, with the SEPA process to be focused on project impacts to congested intersections and hazardous roadway conditions.

Because it is the nature of the concurrency system both that capital facilities construction may lag as much as six years behind development impacts and new projects are constantly be added to the MPS list, it is deemed acceptable under ITP that an imperfect correlation may exist between the mitigations supported by any particular project and the transportation system's capability to immediately respond to the new impacts created.

12. Another limitation on the SEPA process imposed by the Integrated Transportation Program ordinance concerns mitigation of impacts on roadways outside of unincorporated King County. Reviewing the issues raised by Mr. Dickison, it becomes clear that some of the most severe congestion scenarios occur at those locations where County arterials from the Plateau deliver traffic to state highways within the corporate limits of Redmond to the north and Issaquah to the south. KCC 14.70.110.C is explicit in its requirement that "no fees or mitigations for transportation facilities of other agencies will be required by the County unless an agreement has been executed between the County and the affected agency" which specifies standards and fees to be employed.
13. With respect to Vistas at Beaver Crest, the County's SEPA official circulated the project application and traffic study to WSDOT, Issaquah and Redmond. An affirmative request for mitigation was received only from WSDOT pursuant to its interlocal with the County for a right turn lane at SR 202 and Sahalee Way. While it may be true that Vistas at Beaver Crest will contribute traffic to other congested intersections within the State highway system, County ordinances provide no mechanism for mitigation of those impacts in the absence of an appropriate interlocal framework and affirmative cooperation from the jurisdictions affected. Likewise, the intersections identified by Mr. Dickison where AM peak hour impacts are arguably more serious than for the PM peak largely lie within WSDOT jurisdiction. Accordingly, the County's ritual preference for PM peak hour analysis, which is neither mandated by ordinance nor always warranted by the facts, is at worst harmless error in the absence of authority to mitigate identified extra-jurisdictional impacts.
14. The foregoing analysis does not necessarily lead to the conclusion that the role assigned by the County's Integrated Transportation Program to SEPA necessarily complies with the mandates for SEPA contained in State law. One can certainly argue that SEPA requires the mitigation of cumulative significant adverse environmental impacts to traffic facilities wherever located, without regard for the existence of an effective interlocal agreement authorizing their rectification. It is also possible to assert that the percentage thresholds for project impact mitigation contained in the Intersection Standards and employed in the application of the critical links analysis fail to meet SEPA requirements because they provide no mechanism for identifying and mitigating absolute quantitative impacts. Analytically, a percentage threshold does not provide a quantitative mechanism for determining the significance of impacts but rather a procedure based on fairness for allocating fiscal responsibility independent of the absolute level of impact or its significance.

The preceding discussion notwithstanding, this administrative tribunal lacks jurisdictional authority to find that the County's Integrated Transportation Program is invalid because it violates the mandates of SEPA. As a creature of County government, the Hearing Examiner's office is necessarily subject to the requirements and limitations imposed by County ordinances, even though a court of competent jurisdiction might find such ordinances to be unlawful. In short, if Mr. Dickison wishes to test the fundamental legality of the County's Integrated Transportation Program, such effort will require him to go beyond the administrative process

C. PRELIMINARY PLAT APPLICATION

15. Vistas at Beaver Crest is part of a large forested area within the Sammamish Plateau which is currently undergoing conversion to Urban Residential development within a number of separate subdivisions. As a consequence, proposals such as Vistas at Beaver Crest often do not have any immediate residential neighbors who are likely to complain about direct impacts from construction of the project. However, the fact that the overall effects of development of these plats are going largely unnoticed within the public hearing process does not imply that these impacts are inconsequential. Mr. Dickison has drawn attention to the cumulative impacts which will be experienced in the area of traffic. In a similar manner, these Sammamish Plateau plats cumulatively will also result in a massive loss of upland wildlife habitat. This fact is documented in the habitat study done for the various Beaver Crest plats, which observes that while any one proposal "would cause only a proportional and small reduction in wildlife, these projects and other projects in the region cumulatively result in a significant loss of wildlife habitat." Thus, it is expected that species which have extensive territorial range requirements will likely be driven from the area and that the value of the habitat which remains will be diminished by fragmentation and the interruption of travel and dispersal corridors.
16. Because this application concerns only one of a number of development properties under the same ownership, certain plat amenities are being provided offsite within adjacent parcels. Thus, the Vistas at Beaver Crest R/D facility will be constructed on the adjacent subdivision to the north while buffer averaging may be provided for the Tract B wetland as a whole, including portions which are both onsite and offsite to this development.

CONCLUSIONS:

1. The basic standard to be applied to the review of a threshold determination appeal is that the SEPA record must demonstrate the actual consideration of relevant environmental impacts. With respect to those relevant impacts shown to be actually considered, the decision of the SEPA official is entitled to substantial weight on review and shall not be overturned unless clearly erroneous based on the record as a whole.
2. The SEPA record discloses actual consideration by the Department of Development and Environmental Services of the potential environmental impacts of traffic generated by this proposal. The Appellant has not met his burden of proof to demonstrate that the determination of non-significance is either contrary to law or inadequately supported by the record and therefore clearly erroneous.
3. The King County Integrated Transportation Program undertakes to provide a comprehensive approach to the problem of mitigating the traffic impacts caused by urban development. Although SEPA authority continues to have an important role to play in this programmatic approach, this role no longer involves providing a universal remedy to every form of impact. Under the ITP, generic impacts to roadway capacity are analyzed pursuant to concurrency standards and mitigated by capital projects funded with MPS fees. Within this system SEPA authority is focused on developmental impacts to specific intersections and on such other

unique effects as a proposal may have on roadway safety and operations. While no strict ordinance prohibition precludes County SEPA authority from being used to remedy capacity problems, the ITP system plainly does not contemplate the use of SEPA to implement systemic upgrades where the impact of the proposal under review is not qualitatively different from that of other similar projects. In the absence of a showing that Vistas at Beaver Crest will have roadway capacity impacts of an unusual or unique nature, the mandate of ITP is to rely upon the concurrency and MPS provisions to ameliorate capacity problems.

This does not mean that the Sammamish Plateau area will not experience cumulative traffic capacity issues. To the extent that the rate of population growth on the Plateau greatly exceeds planning projections, one expects both the identification of CIP projects to remedy capacity shortfalls and their placement on the MPS list to lag behind demand. In like manner, the six-year window for mitigation provided by the concurrency system virtually assures that there will be occasions prior to the expiration of the sixth year when traffic demand will exceed actual capacity. But if the County's coordinated system proves to be inadequate, the preferable answer is to fix the system, not to revert to piecemeal solutions under SEPA authority.

4. Based on the record, the decision of the SEPA official is not clearly erroneous, is supported by the evidence of record, and assures that there is no probability of significant adverse environmental impacts.
5. If approved subject to the conditions implemented below, the proposed subdivision makes appropriate provision for the public health, safety and welfare; serves the public use and interest; and meets the requirements of RCW 58.17.110.
6. The conditions of approval imposed herein, including dedications and easements, will provide improvements which promote legitimate public purposes, are necessary to serve the subdivision and are proportional to its impacts; are required to make the proposed plat reasonably compatible with the environment; and will carry out applicable state laws and regulations and the laws, policies and objectives of King County.

DECISION:

The threshold determination appeal of Craig Dickison is DENIED. The MDNS issued by the Department of Development and Environmental Services on May 20, 1997, is affirmed.

The preliminary plat of Vistas at Beaver Crest, as revised and received on June 16, 1997, is APPROVED, subject to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the R-6 zone classification. All lots shall also meet the minimum dimensional requirements of the R-6 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is

larger. Minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.

4. The applicant shall obtain final approval from the King County Health Department.
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards, established and adopted by Ordinance No. 11187.
6. The applicant shall obtain the approval of the King County Fire Protection Engineer, regarding compliance with the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.
7. Final plat approval shall require full compliance with drainage provisions set forth in King County Code 9.04 and the storm drainage requirements and guidelines as established by the Water and Land Resources Division. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. The following conditions represent portions of the Code and requirements, which apply to all plats.
 - a. Drainage plans and analysis shall comply with the 1990 King County Surface Water Design Manual and updates which were adopted by Public Rule effective January 1, 1995. LUSD approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by LUSD Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with the plans on file."
8. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council, prior to final plat recording.
9. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either:
 - (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application, and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in

effect as of the date of building permit application.

10. Lots within this subdivision are subject to KCC 21A.43 and Ordinance 12532 which impose impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat received final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
11. There shall be no direct vehicular access to or from 244th Avenue SE and SE 4th Place from any lots which abut these two streets. A note to this effect shall appear on the final plat and engineering plans.
12. The following conditions specify the required road improvements for the subject plat:
 - a. Southeast 4th Place shall be improved as an urban neighborhood collector street from 244th Avenue SE to the west side of the SE 4th Place/243rd Place SE intersection. West of the SE 4th Place/243rd Avenue SE intersection, SE 4th Place shall be improved with a 15-foot-wide gravel surface. As an alternative, SE 4th Place west of the SE 4th Place/243rd Avenue SE intersection may be improved as an urban full-width neighborhood collector, with appropriate off-site area deeded to King County for right-of-way.
 - b. Two-Hundred-Forty-Third Place Southeast (south of 242nd Way SE) and the road stub from SE 1st Place to the north boundary of the site shall be improved as urban subcollector streets.
 - c. SE 1st Place (west of 242nd Way SE), 242nd Way SE, 241st Place SE, and 242nd Place SE shall be improved as urban subaccess streets.
 - d. SE 3rd Place, SE 2nd Place, and 243rd Place SE (north of 242nd Way SE) shall be improved as urban minor access streets.
 - e. Tracts J and K shall be improved as private access tracts, per the provisions of KCRS 2.09B. This includes a requirement that the 90-degree turn in Tract J be modified to a low speed curve.

Tract J shall be owned and maintained by Lots 120 - 124. Tract K shall be owned and maintained by Lots 108 - 113. A pedestrian access easement for the benefit of the homeowners of the subject plat and their heirs, successors and assigns, which provides access to Tract L, shall be shown on the final plat. A note to this effect shall appear on the final plat and engineering plans.
 - f. With the exception of Tracts J and K, road right-of-way within the subject plat shall be dedicated to King County, consistent with the King County Road Standards.
 - g. Modifications to the above road conditions may be considered by King County, pursuant to the variance procedure in the King County Road Standards (KCRS 1.08).

13. Documentation shall be submitted with the engineering plans to demonstrate that entering sight distance is available from the SE 4th Place/243rd Place SE intersection without encroaching on Tract B, a sensitive areas tract.
14. Off-site access to the subject plat shall be over a dedicated and improved County road which has been accepted by King County for maintenance. If the proposed access road (i.e., SE 8th Street/244th Avenue SE) has not been accepted by King County at the time of recording, then said road shall be fully bonded by the applicant of this subdivision or by others.
15. Planter islands (if any) within the cul-de-sac bulbs shall be maintained by the abutting lot owners or a homeowners' association. This shall be stated on the face of the final plat.
16. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE
AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/ sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

17. The proposed subdivision shall comply with the sensitive areas requirements as outlined in KCC 21A.24. Prior to engineering plan approval, the applicant shall provide notice on title as outlined in KCC 21A.24.170. Permanent survey marking and signs, as specified in KCC 21A.24.160, shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g. with bright orange construction fencing) shall be placed on the site, and shall remain in place until all construction activities are completed.
18. Preliminary plat review has identified the following sensitive areas issues which apply to this project. All other applicable requirements for sensitive areas shall also be addressed by the

applicant.

- a. Determine the top, toe, and sides of 40% slopes by field survey. Provide a 10-foot buffer from these slopes and a 15-foot building setback from the buffer, if the buffer and/or building setback fall within the boundaries of the subject plat.
- b. The wetland lying within Tract B and continuing offsite west of the remainder of the plat is a Class 2 wetland. A minimum 50-foot-wide wetland buffer shall be provided around this wetland, to the extent that the buffer falls within the subject plat. Alternatively, buffer averaging for the entire wetland may be used, subject to compliance with the requirements of KCC 21A.24.320(B), as determined by LUSD. Submittal of a buffer enhancement plan and bonding to assure implementation of the plan may be required by LUSD, as part of LUSD's approval of a buffer averaging proposal. (Note that modification of the boundary between Tracts A and B may be required by LUSD.)
- c. The above-noted wetland and wetland buffer shall be placed within a sensitive area tract (SAT), to the extent that the wetland and/or buffer fall within the subject plat. The SATs shall be shown on the final plat and engineering plans.
- d. A 15-foot building setback shall be provided from the wetland buffers, to the extent that the building setback falls within the subject plat.
- e. Design and construction of the SE 4th Place road crossing shall be consistent with KCC 21A.24.330(N). The road culvert shall be designed to allow for the equalization of surface water on either side of the culvert without causing erosion or channelization within the wetland.

A wetland impact mitigation plan shall be submitted for review and approval by LUSD. Bonding may be required by LUSD to assure implementation of the plan, and the survival of any required plantings for a five year period.

19. Suitable recreation space shall be provided, consistent with the requirements of KCC 21A.14.189 and 21A.14.190. A recreation space improvement plan shall be submitted with the engineering plans and approved by LUSD and the King County Parks Division prior to final plat recording.
20. A homeowners' association or other workable organization shall be established to the satisfaction of LUSD which provides for the ownership and continued maintenance of the recreation areas, SATs, and landscape open space areas.
21. Street trees shall be provided as follows:
 - a. Trees shall be planted at a rate of one tree for every 40 feet of frontage on SE 4th Place and 244th Avenue Southeast. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County

Department of Transportation (KCDOT) determines that trees should not be located in the street right-of-way.

- c. If KCDOT determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
- d. The trees shall be owned and maintained by the abutting lot owners or the homeowners' association or other workable organization, unless the County has adopted a maintenance program. This shall be noted on the face of the final recorded plat.
- e. The species of trees shall be approved by DDES and KCDOT if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
- f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval. KCDOT shall also review the street tree plan if the street trees will be located within the right-of-way.
- g. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

A \$538 landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.

22. The applicant applied for and was granted a variance for shared drainage facilities (L96V0125). The engineering plans shall show compliance with all the conditions of approval for this variance at engineering plan submittal.

The following conditions have been established under SEPA authority to mitigate the adverse environmental impacts of this development. The applicant shall demonstrate compliance with these items prior to final approval.

23. With regard to the pending proposed subdivisions of the Renaissance (L96P0025), Heights at Beaver Crest (L96P0018), and the subject plat (Vistas at Beaver Crest), final plat approval shall be limited to no more than a total of 200 lots for the three plats unless:
- a. The 228th Avenue SE/NE CIP widening project is within 12 months of the anticipated award of a construction contract; or
 - b. One or more of the developers of these three plats, either individually or cooperatively, widen 228th Avenue SE at SE 8th Street to provide a northbound right-turn lane and

lengthen the southbound left-turn lane to provide an additional 150 feet of left-turn storage length. As an alternative, bonding may be provided which assures the construction of these improvements within one year of the recording of the subject plat.

- c. At the time of final plat review, the applicant for the subject plat may elect to conduct traffic counts to determine if the traffic volume projections are lower than anticipated. Additional lots may receive final approval if King County Traffic Engineering, Roads Services Division determines that:

- The assumptions used for traffic volume projections are, in fact, lower than projected at the time of application, and
- The LOS at SE 8th Street/228th Avenue SE is “E” or better and the southbound left-turn storage length accommodates expected queues.
- This mitigation is in addition to the intersection improvements required of the preliminary approved plats of Beaverdam and Three Willows. The signal and southbound left-turn lane at SE 8th Street/228th Avenue SE must be constructed prior to final approval of the subject plat.

24. To address traffic impacts on the intersection of SR 202/Sahalee Way from the subject plat and the developments of Norris Estates, Plateau Properties, Heights at Beaver Crest and Renaissance, the following improvements shall be constructed:

Lengthen the existing eastbound right-turn lane up to the existing bridge (approximately 600 lineal feet from bridge to stop bar) including paved shoulders, drainage relocation, guardrails, signal modifications and illumination. (Note that widening of the existing bridge is not a requirement of this condition.)

These improvements shall be constructed by one or any combination of the developers of the above-noted development projects. Engineering plans for the improvements shall be reviewed and approved by the Washington State Department of Transportation (WSDOT), prior to engineering plan approval for the subject plat. As an alternative to construction of the required improvements prior to recording of the subject plat, bonding may be provided which assures the construction of the improvements within one year of the recording of the plat.

25. The pending proposed subdivisions of Renaissance, Heights at Beaver Crest, The Greens at Beaver Crest and the subject plat will have a cumulative impact on SE 8th Street and 244th Avenue Southeast. To address the subject plat’s impact, the applicant shall complete the following:

- a. Prior to the recording of the subject plat, the applicant shall improve the west half of 244th Avenue SE to the urban half-street standard along the frontage of the property, and shall provide an eight-foot-wide paved shoulder on the north side of SE 8th Street between the subject property and 228th Avenue Southeast. An extruded curb may also be required on the north side of the roadway, if determined appropriate by the Traffic Engineering Section, Road Services Division. The roadway profile alignment and cross section shall be consistent with the road variance application for SE 8th St., which is currently under review (File No. L96V0072). The road improvements shall

also be consistent with KCC 21A.24.330(N) concerning wetland crossings, as determined by the King County Land Use Services Division (LUSD).

- b. As an alternative to providing an 8-foot-wide paved shoulder for the off-site portion, the applicant may improve the north half of SE 8th Street from the southeast corner of the subject property to 228th Avenue SE to the urban half-street standard, consistent with CIP Project 201397. This improvement shall also be consistent with KCC 21A.24.330(N) concerning wetland crossings and Road Variance L96V0072.

Modifications to the required road improvements may be requested and granted through a road variance application, to address timing issues associated with the design of the CIP project for 228th Avenue Southeast.

In lieu of the construction of the above-noted road improvements prior to the recording of the subject plat, bonding may be provided which assures the construction of the required improvements within one year of the recording of the plat.

- 26. In order to assure an equitable sharing of the costs associated with the ultimate planned road improvements for the SE 8th Street/244th Avenue SE corridor between 228th Avenue SE and NE 8th Street, the applicant shall pay a pro-rata share towards the widening of the SE 8th Street/244th Avenue SE corridor, consistent with the developers' portion of CIP Projects 201397 and 200797. (Note that the required road improvements to SE 8th Street and 244th Avenue SE stated in the condition above shall be considered for a pro-rata share credit.)

If at the time of final plat recording, a new MPS fee schedule that includes the SE 8th Street/244th Avenue SE corridor is adopted, and if the applicant chooses to pay MPS fees at the time of building permit approval, a pro-rata share payment, as noted above, will no longer be required at the time of final plat approval.

- 27. This development proposal will have a significant adverse impact at the intersection of NE 8th Street/228 Avenue NE, which is operating at LOS "F" in the AM peak hour and PM peak hour. There is currently no King County programmed improvement project at this location.

To mitigate the development's impact at this intersection, final plat approval shall not be granted unless:

- a. King County has a programmed intersection project for this intersection, and the anticipated award of a construction contract for the intersection improvement is within 12 months, or
 - b. The developer, individually or with others, constructs improvements that bring the LOS to "E" or better. Improvement plans for this intersection must be reviewed and approved by the Traffic Engineering Section prior to engineering plan approval for the subject plat.
- 28. Vistas at Beaver Crest is located in the Evans Creek Drainage Basin. Drainage from this site flows generally to the north over steep slopes to Wetland EL S9, or to the northwest to an unnamed tributary to Wetland EL S9. Then the flow turns east through the wetland to cross the proposed 244th Avenue SE alignment, then passes through Allen Lake (Wetland EC 38),

and then turns north to flow through portions of Wetland EC 41.

Allen Lake has been identified by the King County Water and Land Resources Division (WLRD, formerly SWM) as a volume sensitive lake. To protect Allen Lake and the unnamed creek from drainage volume impacts, the following mitigating measures shall apply:

- a. The detention facility designs shall comply with King County Runoff Time Series (KCRTS) Level 3 methodology. The KCRTS Level 3 standard requires maintaining the duration of high flows at their predevelopment levels for all flows greater than 1/2 of the 2-year flow up to the 50-year flow, and controlling the 100-year peak flow rate to its predevelopment level. An appropriate volumetric factor of safety shall be added as approved by DDES.
- b. The unnamed creek receiving runoff from Basins C and D must be evaluated for capacity and potential erosive impacts. Where erosive flows may result, mitigating measures such as a bypass pipeline to convey high flow peaks to the base of the steep slope and/or non-erosive stream channel reaches are required. Potential impact to the shallow well located on Tax Parcel 3425069043 must be considered in both flow control and water quality design. Final approval by DDES is required for any proposed discharge design.

ORDERED this 22nd day of July, 1997.

Stafford L. Smith, Deputy
King County Hearing Examiner

TRANSMITTED this 22nd day of July, 1997, to the following parties and interested persons:

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Lanny Henoeh, DDES/LUSD, Site Plan Review Section
Rich Hudson, DDES/LUSD
Michaelene Manion, DDES/LUSD
Paulette Norman, Traffic Planner, KC Dept. of Transportation
Lisa Pringle, DDES/LUSD Supervisor
Richard Warren, Transportation Planner, KC Dept. of Trans.
Bruce Whittaker, DDES/LUSD

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) **on or before August 5, 1997**. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council **on or before August 12, 1997**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of

this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

Stafford L. Smith was the Hearing Examiner in this matter. Participating at the hearing were Lanny Henoch, Bruce Whittaker, Rich Hudson, Richard Warren and Dick Etherington, representing the County; Craig N. Dickison, Bob Johns and Vincent Geglia.

The following exhibits were offered and entered into the hearing record:

Exhibit No. 1	LUSD File No. L96P0028
Exhibit No. 2	LUSD staff report prepared for the July 8, 1997, public hearing
Exhibit No. 3	Applicant's application, received November 7, 1996
Exhibit No. 4A	Environmental Checklist, received November 7, 1996
Exhibit No. 4B	Revised Environmental Checklist, received February 2, 1997
Exhibit No. 5	SEPA Mitigated Determination of Nonsignificance, issued May 20, 1997
Exhibit No. 6	Affidavit of Posting, received June 1, 1997, indicating the property was posted with signs on June 10, 1997, that gave notice of the public hearing
Exhibit No. 7	Preliminary plat map, received November 7, 1997
Exhibit No. 8	Revised preliminary plat map, received February 7, 1997
Exhibit No. 9	Revised preliminary plat map, received June 16, 1997
Exhibit No. 10	Land use map - Kroll maps 955E, 956W, 959W and 958E
Exhibit No. 11	Assessor maps for Sections 34 and 35, Township 25, Range 6
Exhibit No. 12	Applicant's site plan for the portion of the plat lying south of Southeast 4th Place (i.e. Lots 98-124) on which townhouses are proposed to be developed. This site plan was received June 16, 1997
Exhibit No. 13	Certificate of Transportation Concurrence with cover letter dated November 1, 1996
Exhibit No. 14	Traffic Impact Analysis, prepared by Transportation Planning & Engineering, Inc. (TP&E), received December 12, 1996
Exhibit No. 15	Letter from Vincent J. Geglia of TP&E, regarding the addition of five lots to the plat
Exhibit No. 16	Preliminary Geotechnical Report, prepared by Terra Associates, Inc., dated October 24, 1996
Exhibit No. 17	Wildlife and Plant Assessment, prepared by Raedeke Associates, Inc., dated November 1, 1996
Exhibit No. 18	Wetland Evaluation, prepared by Terra Associates Inc., dated November 4, 1996
Exhibit No. 19	Addendum Wetland Evaluation, prepared by Terra Associates, Inc., dated February 6, 1997
Exhibit No. 20	Letter from Bruce Kvam of Beak Consultants, Inc., dated February 24, 1997, regarding Level II Stream Survey Results for Beaver Crest
Exhibit No. 21	Petition/letter to Brian Derdowski from 19 parties, dated April 24, 1997 (4 pages)
Exhibit No. 22	Letter from Scott K. McCammant, Vice-President of Baseball of the Eastlake Little League, dated April 14, 1997
Exhibit No. 23	Letter from Craig N. Dickison, dated June 10, 1997, received June 11,

- 1997, appealing the SEPA determination (Exhibit No. 5)
- Exhibit No. 24 Letter from the Washington State Department of Transportation (WSDOT), dated May 5, 1997, regarding required improvements at SR 202/Sahalee Way
- Exhibit No. 25 Letter from Gary Kriedt, King County Metro Transit Division, dated June 9, 1997
- Exhibit No. 26 Area application summary submitted by King County Department of Transportation (Warren)
- Exhibit No. 27 Area distribution map
- Exhibit No. 28 Applicant's proposed revised Condition No. 19
- Exhibit No. 29 SEPA file

The following exhibit was entered pursuant to administrative continuance:

- Exhibit No. 30 Letter dated July 8, 1997 (with enclosures) from Craig N. Dickison to the Hearing Examiner.

SLS:daz
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